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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,490	04/15/2004	Marija Heibel	IR 7564-00	1345

7590 09/27/2006

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EXAMINER	
HARDEE, JOHN R	
ART UNIT	**PAPER NUMBER**
1751	

DATE MAILED: 09/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/826,490	HEIBEL ET AL.	
	Examiner	Art Unit	
	John R. Hardee	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 26-66 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 45-51 and 54-66 is/are rejected.

7)☐ Claim(s) 26-44,52 and 53 is/are objected to.

8)☒ Claim(s) 26-66 are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date 09212006.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 12, 2006 has been entered.

Election/Restrictions

2. Applicant is reminded that a restriction and a species election remain in effect. Claims have not been searched beyond the elected species, as they are not allowable to the extent that they read on the elected species. *No claims can pass to issue until all non-elected subject matter has been deleted from the claims.*

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422

F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 45-51, 54-57 and 59-66 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6-9 of U.S. Patent No. 6,620,777 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims recite softening compositions comprising a cationic softener, a fragrance oil and a beneficiating agent which may be encapsulated in a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

5. Claims 45-51, 54-57 and 59-66 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,864,223 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims recite softening compositions comprising an ester quat cationic softener, a fragrance oil and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

6. Claims 45-51, 54-57 and 59-66 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 10/914,852 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '852 recites a composition comprising an ester quat, a perfume and a water soluble cross linked polymer as presently recited. Use of

an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 45-51, 54-57 and 59-66 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,949,500 in view of Popplewell et al., US 2004/0071742. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patent recites a composition comprising an ester quat, a perfume, a chelant, and a water soluble cross linked polymer as presently recited. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a

melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of the '500, because Popplewell teaches at [0013] that encapsulated perfumes can be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

8. Claims 45-51, 54-57 and 59-66 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 8 of copending Application No. 10/825,761. Although the conflicting claims are not identical, they are not patentably distinct from each other because the '761 recites a composition as presently recited, except that the compositions of the '761 further comprise a chelant. Accordingly, the claims of the '761 anticipate the present claims. Anticipation is the epitome of obviousness.

Claim Rejections - 35 USC § 103

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 45-51, 54-57 and 59-66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al., US 2002/0132749 in view of Popplewell et al., US 2004/0071742. Smith discloses liquid fabric softening compositions comprising a

thickener obtained by polymerizing 5-100 mole % of a cationic vinyl addition monomer, 0-95 mole % of acrylamide, and 70-300 ppm of a divinyl addition monomer cross-linking agent (abstract). The polymer improves the deposition of fragrance oil. The compositions further comprises from 0.01% to 35% by weight of a cationic softener [0017]. The softener may be a monoester quat, as shown at [0020] or a mixture of ester quats, as shown at [0023]. It is well known in the art that these latter ester quats are formed as a mixture of mono-, di- and triesters. Aminocarboxylate and aminophosphonate chelants are disclosed at [0031]. Use of an encapsulated fragrance as claimed is not disclosed. Popplewell discloses a polymeric encapsulated fragrance for use in cleaning products (abstract). The fragrance is encapsulated by a first polymer which is then coated with a cationic polymer, preferably cationic starch or guar. The encapsulating polymer may be an aminoplast, a melamine/formaldehyde polymer or a urea/formaldehyde polymer [0020]. The method claims read on using fabric softeners in the intended fashion. It would have been obvious at the time that the invention was made to incorporate the encapsulated fragrance of Popplewell into the fabric softeners of Smith, because Popplewell teaches at [0013] that encapsulated perfumes ca be used to alter the aroma characteristics of other ingredients used in compositions which comprise these encapsulated perfumes.

Allowable Subject Matter

11. Claims 26-44, 52 and 53 are objected to as containing non-elected subject matter, but they would be allowable if amended to recite the elected species of cationic surfactant. Reasons are of record in a previous office action.

12. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner, Dr. John R. Hardee, whose telephone

number is (571) 272-1318. The examiner can normally be reached on Monday through Friday from 8:00 until 4:30. In the event that the examiner is not available, his supervisor, Mr. Douglas McGinty, may be reached at (571) 272-1029.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

John R. Hardee
Primary Examiner
September 21, 2006